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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

PAN AMERICAN PETROLEUM CORPORATION, *Petitioner*,

v.

FRED A. SEATON, Secretary of the Interior, *Respondent*.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Pan American Petroleum Corporation, formerly Stanolind Oil and Gas Company, prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled case on November 1, 1956.

OPINIONS BELOW

The order of the District Court in No. 13,066 is unreported. It appears in the Record at pages 83-88. The opinion of the Court of Appeals, printed in Appendix B hereto, *infra*, p. 8a, is reported at 242 F. 2d 23.

JURISDICTION

The judgment of the Court of Appeals was made and entered on November 1, 1956. R. 96; p. 9a, *infra*. Rehearing was denied on March 19, 1957, R. 103. The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1).

QUESTIONS PRESENTED

1. Whether an offshore oil and gas lease, void *ab initio*, is qualified for maintenance as a federal lease under section 6 of the Outer Continental Shelf Lands Act, where the lessee ceased complying with the terms and provisions of said void lease between June 5, 1950, the date of this Court's opinion in *United States* v. *Louisiana*, 339 U.S. 699, and August 7, 1953, the effective date of the Outer Continental Shelf Lands Act.

2. If so, whether such lease may now be maintained for a period equal to the period of the primary term of the lease remaining unexpired on December 11, 1950.

3. Whether the District Court, as affirmed by the Court of Appeals, erred in merely reviewing the reasonableness of Respondent's interpretation, rather than determining the correct construction of section 6 of the Outer Continental Shelf Lands Act.

If this petition is granted, this additional question will be presented:

4. Whether all obligations of Petitioner's leases, together with the primary terms and rental payment rights therein granted, are suspended during the period between the date of Respondent's negative determinations with respect to said leases and final determination of these suits.

STATUTES INVOLVED

The statutory provisions involved are section 3 of the Submerged Lands Act of May 22, 1953, c. 65, 67 Stat. 30, 43 U.S.C. (Supp. II, 1952) sec. 1311, and section 6 of the Outer Continental Shelf Lands Act of August 7, 1953, c. 345, 67 Stat. 462-467, 43 U.S.C. (Supp. II, 1952) sec. 1335. They are printed in Appendix A, *infra*, pp. 1a-7a.

STATEMENT OF CASE

No. 13,066

On September 12, 1946, the Louisiana State Mineral Board issued to Petitioner six oil, gas and mineral leases covering submerged lands lying wholly or partly on the outer continental shelf. Each lease was issued for a primary term of five years, later extended to seven years. (R. 31-32, 39).

The initial consideration or bonus of $179,150.00 which Petitioner paid for the leases maintained them for a year. Failing to commence drilling operations within that period, the leases were to terminate, unless Petitioner paid an additional sum for the privilege of deferring the commencement of such operations for another year. Thereafter, successive annual payments of delay rentals could be made to defer the commencement of drilling operations throughout the extended primary term of each lease.[1] (R. 17, 32-33).

[1] Oil and gas leases may be classified, first with respect to the form of the granting clause, determining the nature of the lessee's interest; second, with regard to the form of the habendum clause, fixing the duration of that interest; and third, with respect to the nature of the drilling and delay rental clause, concerning the obligation, if any, to drill a well or, in lieu thereof, to pay delay rentals. The prevailing type of

Petitioner paid annual delay rentals falling due in 1947, 1948 and 1949. These payments totaling $268,725.00 would have maintained the leases in force and effect to September 12, 1950, had they been valid. (R. 33).

On June 5, 1950, this Court ruled that the leased area belonged to the United States rather than to Louisiana. *United States* v. *Louisiana*, 339 U.S. 699. The decree in that case, enjoining Louisiana and its lessees from mineral operations in the area, was entered on December 11, 1950. 340 U.S. 899. (R. 53).

After June 5, 1950, Petitioner was left with three courses of action: (i) it could release all its Louisiana offshore leases in which it had an investment as of June 5, 1950, of some $3,593,217.81; (ii) it could try

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habendum clause provides that the lease is for a fixed term of years and as long thereafter as oil and gas is produced from the premises. As to drilling clauses, one in which the lessee covenants to drill *or* pay a stipulated sum (called a delay rental) for delaying such drilling, is known as an "or" type drilling clause. An "unless" type drilling clause provides that if no well is commenced before a specified date the lease is to terminate *unless* the lessee pays a stipulated sum (delay rental) for the privilege of deferring the commencement of such drilling operations. The "or" and "unless" clauses may be distinguished as to the manner of terminating the lessee's interest. The "or" clause is one of condition subsequent requiring affirmative action by the lessor for termination. The "unless" clause is one of special limitation, operating to automatically cause the primary term remaining unexpired to revert to the lessor unless the lessee either commences drilling or pays in advance for the privilege of deferring such operations. Petitioner's leases are "fixed term" leases containing the "unless" type of drilling and delay rental clause. II *American Law of Property*, Oil and Gas Rights, secs. 10.26, 10.29, 10.30, 10.33; Sullivan, *Handbook of Oil and Gas Law*, secs. 33, 40, 46, 47, 52; 2 Summers, *Oil and Gas* (Perm. ed. 1938), secs. 292, 337.

to maintain all its Louisiana offshore leases by annual delay rental payments of $930,228.20 notwithstanding the fact that its lessor's title had failed; (iii) it could pursue a middle-of-the-road course by releasing some of the leases and attempting to maintain others—a course which would somewhat limit its financial losses should future rental payments prove fruitless. (R. 46).

Petitioner chose the third course of action. With respect to the six nonproducing leases in question, Petitioner did not pay the $89,575.00 in delay rentals which became due on September 12, 1950, and on September 15, 1950, it released the leases to the State of Louisiana. (R. 34-35, 39). The decision to stop payment on these leases was not made because of unfavorable seismic reports. It would not have been made but for the decision in the *Louisiana* case. (R. 50).

In 1953, Congress enacted two statutes dealing with submerged lands and State-issued offshore leases which had been maintained in force and effect to June 5, 1950. By the Submerged Lands Act of May 22, 1953, Congress granted to coastal States the offshore submerged lands within their boundaries. 67 Stat. 29, 43 U.S.C. (Supp. II, 1952), secs. 1301-1315. Section 3 of that Act vests certain rights in the States, and rights so vested are subject to each State-issued lease which was in force and effect on June 5, 1950. Persons holding nonproducing leases were granted the right to maintain them for a term equal to the term of the lease remaining unexpired on December 11, 1950, on the condition that lessees pay to the State all rental payable under the leases between June 5, 1950, and the effective date of the Act, which theretofore had not been paid. 67 Stat. 30, 43 U.S.C. (Supp. II, 1952) sec. 1311(c).

On August 20, 1953, the State of Louisiana denied Petitioner's application for validation of that portion of its offshore leases lying within the State, on the theory that the Submerged Lands Act was not intended to validate oil and gas leases released to the State before the effective date of that Act. (R. 37-38, 71-72). The Louisiana District Court of the Nineteenth Judicial District, however, construed the Submerged Lands Act to require the validation of Petitioner's leases. (R. 55-67). No appeal has been taken from this judgment and it has now become final. Louisiana R. S. 13:4212.

The second statute dealing with offshore lands and State-issued leases, the Outer Continental Shelf Lands Act of August 7, 1953, vests the United States with jurisdiction, control and power of disposition of offshore submerged lands seaward of State boundaries, called the outer continental shelf. 67 Stat. 462, 43 U.S.C. (Supp. II, 1952) secs. 1331-1343. Section 6 of that Act states that its provisions shall apply to "any mineral lease . . . issued by any State . . . if" it meets the eleven requirements expressed in the Act. One of the eleven requirements, expressed in section 6 (a) (2), is that the lease "would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had authority to issue such lease."

Person holding nonproducing leases meeting the requirements of the Act may maintain them for a term equal to the term of the lease remaining unexpired on December 11, 1950, on the condition that the lessees pay to the Federal Government all rental payable under the leases between June 5, 1950, and the effective date of the Act, which theretofore had not been paid. 67 Stat. 466, 43 U.S.C. (Supp. II, 1952) sec. 1335.

On September 10, 1953, Petitioner filed with Respondent a statement evidencing the fact that its leases met the eleven requirements imposed by Congress in section 6 of the Outer Continental Shelf Lands Act, tendered the necessary delay rentals payable under the leases between June 5, 1950, and August 7, 1953, together with delay rentals for the year beginning September 12, 1953, and requested maintenance of its leases as federal leases in accordance with the provisions of the Act, to the extent that they covered lands of the outer continental shelf. (R. 67-77).

Although not denying that the leases met the eleven requirements set out in section 6, Respondent nonetheless determined on November 2, 1953, that the leases were not entitled to be maintained under that provision and rejected the tender of delay rental. (R. 78-80). Sixteen days later, on November 18, 1953, appellant filed its petition in the United States District Court for the District of Columbia to review that determination, as permitted by section 6 (d) of the Act. 67 Stat. 467, 43 U.S.C. (Supp. II, 1952), sec. 1335 (d). (R. 2-15). On cross motions for summary judgment, the District Court on October 25, 1955, granted summary judgment for Respondent. (R. 83-88). By a divided Court, the Court below affirmed the order of the District Court. Appendix B, *infra*, pp. 8a-9a.

No. 13,067

This case presents the same legal question with respect to another lease. The facts are the same as in No. 13,066, except as to area, dates and amounts involved. These factual differences, none of which affect the legal issue, are summarized in the Record at pages 89-90. Judgment in the consolidated appeals was entered by a

divided Court on November 1, 1954. (R. 96; pp. 8a-9a, *infra*). Rehearing was denied March 19, 1957. (R. 103).

REASONS FOR GRANTING THE WRIT

The decision below should be reviewed because it erroneously interprets the Outer Continental Shelf Lands Act so as to cast serious doubt upon hundreds of lease validations already made under the Act,[2] raises a significant question with respect to administrative law, is in conflict with a final State Court decision and with fundamental principles of law espoused by this Court.

1. Respondent's construction of section 6 of the Outer Contiental Shelf Lands Act, concurred in by the Courts below, is in conflict with several fundamental principles of statutory construction espoused by this Court.

Respondent and the Courts below would deny Petitioner benefits under the Act, not because it fails to meet the requirements of section 6(a), but because it fails to meet additional requirements imposed as a result of Respondent's construction of section 6 (b). Section 6 (b) provides that "Any person holding a mineral lease, which as determined by the Secretary meets the

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[2] Applications for the validation of some 401 State-issued offshore oil and gas leases have been directed to Respondent, according to information obtained from the Bureau of Land Management, Department of the Interior. The vast majority of these applications involved Louisiana leases. Of the 266 Louisiana leases validated, 229, involving 772,779.68 acres of submerged land, were still being maintained as federal leases on May 1, 1957. On that same date, 43 of the 66 validated Texas leases were being maintained in effect as federal leases. The 43 Texas leases involve 55,350 acres of submerged land.

requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder" subject to the provisions hereinafter set out. 67 Stat. 466, 43 U.S.C. (Supp. II, 1952) sec. 1335 (b).

The plain meaning of this phrase is that the leases which Respondent is directed to validate are those which meet the eleven requirements enumerated in section 6 (a). Respondent, however, detaches the word "holding" from the rest of section 6 and construes it to additionally require Petitioner to have been holding its leases "in force and effect" as of the effective date of the Act, August 7, 1953. This construction is patently inconsistent with section 6 (a) (2) which requires only that the leases have been maintained "in force and effect" to June 5, 1950. It clearly contravenes the principle adopted by this Court that the preferred statutory construction is one which avoids inconsistencies between provisions of the Act. *Lawson* v. *Suwannee Fruit S.S. Co.*, 336 U.S. 198 (1949); *Helvering* v. *Credit Alliance Corp.*, 316 U.S. 107 (1941). It further violates the principle that statutory terms should be construed by reading them in context and not as detached words and phrases. *Carlson* v. *London*, 342 U.S. 524 (1951); *S.E.C.* v. *C. M. Joiner Leasing Corp.*, 320 U.S. 344 (1943).

This same construction of the word "holding" as requiring the holding of a lease in force and effect by rental payments to the effective date of the Outer Continental Shelf Lands Act, August 7, 1953, also renders superfluous section 6 (a) (4). This section expressly provides that lessees who held leases in force and effect on June 5, 1950, may tender *all* back rentals due under the leases and thus provide for their rein-

statement. Respondent's construction vitiating this provision of the Act conflicts with this Court's pronouncement that the construction which gives effect to every part of the statute is presumed to be the one intended by Congress.[3] *United States* v. *Menasche*, 348 U.S. 528 (1955); *Markham* v. *Cabell*, 326 U.S. 404 (1945).

Respondent and the Courts below have also violated this Court's rules in construing another word in section 6 (b), which provision states that nonproducing leases, such as Petitioner's, may be maintained for a term from August 7, 1953, "equal to the term remaining unexpired on December 11, 1950." 67 Stat. 466, 43 U.S.C. (Supp. II, 1952) sec. 1335 (b).

Respondent and the Courts have detached the word "term" from the above quoted phrase and have construed it to mean the "immediate estate" of the lessee, and would contend that since Petitioner did not make rental payments under the leases on September 12, 1950, it had no "term" remaining unexpired on December 11, 1950. Construction of the word "term" in this manner to mean that benefits under the Act would accrue to lessees only if their void leases had been maintained by rental payments in force and effect to

[3] The suggestion by Respondent that the pay *"all* rents" language of Section 6 (a) (4) was intended merely to permit making up deficiencies in rental payments obviously does violence to the plain, unambiguous language of the Act. In the validation process, Congress provided that lessees could tender *"all* rents" which theretofore had not been paid in accordance with the provisions of the leases and any attempt to construe the world "all" as limiting payment to something less than the total amount due under the leases does violence to the plain language employed by the authors of the legislation.

December 11, 1950, is in conflict with section 6 (a) (2) which requires only that the leases have been maintained in force and effect to June 5, 1950. Again, the interpretation chosen by Respondent and concurred in by the Courts below conflicts with the principle that the preferred statutory construction is one which avoids inconsistencies between provisions of the Act and that statutory terms should be construed by reading them in context and not as detached words and phrases. Cases cited, *supra*, pp. 9, 10.

To construe the word "term" in said phrase as constituting the "immediate estate" of the lessee, as is the case, would, even more significantly, make it literally impossible for Respondent to apply the Act to *any* State-issued lease. *No* State-lessee had an "immediate estate" in any State-issued lease on December 11, 1950, since all such leases were nullities. *United States* v. *Louisiana*, 339 U.S. 699 (1950). An interpretation which would nullify section 6 in its entirety clearly contravenes the principle urged by this Court that the construction which gives effect to every part of the statute is presumed the one intended by Congress. Cases cited, *supra*, pp. 9, 10. Application of such a construction raises serious doubts as to the validation of State-issued leases which have been made by Respondent since August 7, 1953. Pursued to its logical conclusion, the theory would nullify the hundreds of reinstatements already made by Respondent and would prevent recognition of all other State-issued leases awaiting validation.[4]

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[4] The Bureau of Land Management, Department of the Interior, advises that as of May 1, 1957, some 37 leases were awaiting validation under the Outer Continental Shelf Lands Act.

This construction of the Act by Respondent, concurred in by the Courts below, is the result of two errors, the first of which is a failure to distinguish between a lease which has a term remaining unexpired and a lessee who has an estate in a term remaining unexpired. Respondent construes the grant of the terms remaining unexpired in the leases as a limitation that the lessees must have an estate in such terms. The second error results from an insistence that the payment of delay rentals between June 5, 1950 and August 7, 1953, operated to give the payor an estate in terms remaining unexpired, which it did not, so as to give those who paid superior rights under the Act as compared with those who did not—when in fact their rights are the same.

On June 5, 1950, the terms remaining unexpired in the leases passed to the U. S. Government so as to vest the whole estate in the leases in the Federal Government. It therefore follows that none of the lessees had an estate in the leases or any rights under them, and nothing they could do or refrain from doing after June 5, 1950 could have any effect on the terms remaining unexpired. Until enactment of the Outer Continental Shelf Lands Act, Respondent was without power to accept delay rentals in return for a conveyance back of the term remaining unexpired in any of these leases.

The Act is merely an offer, for a stipulated consideration, to convey back to prior holders the terms of the State-issued leases remaining unexpired on June 5, 1950. The duration of the grant was understandably shortened by a period equal to the time between June 5, 1950 and December 11, 1950, when, although a lessee may not have, he could have operated on his lease. On

December 11, 1950, Louisiana and its lessees were enjoined from mineral operations in the area. 340 U.S. 899. (R. 53).

It is of continuing import that those charged with the administration of statutes and the Courts, who have the responsibility of independently interpreting statutes, observe the fundamental principles of statutory construction formulated by this Court; principles designed for the express purpose of giving statutes the meaning intended by Congress. *U. S.* v. *C.I.O.*, 335 U.S. 106 (1947). It is submitted that a decision by this Court eliminating the confusion with respect to basic principles of property law would do much to stem future litigation involving the administration of the Outer Continental Shelf Lands Act and all other federal mineral leasing acts. Because of the far reaching implications involving hundreds of other leases, settlement of the questions posed by these cases is plainly in the public interest. Beyond that, a decision in this case will determine the same legal issue for other litigants.[5]

2. The decision of the Court below is in conflict with a final State Court decision construing the Submerged Lands Act, a statute *in pari materia* with the Outer Continental Shelf Lands Act. *Stanolind Oil and Gas Company* v. *State Mineral Board*, No. 46,628, 19th Jud.

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[5] Civil Action No. 4657-55, styled *Shell Oil Co.* v. *Hon. Fred A. Seaton, Secretary of the Interior*, and Civil Action No. 4658-55, styled *Ocean Drilling and Exploration Co. et al.*, v. *Hon. Fred A. Seaton, Secretary of the Interior*, are currently pending in the United States District Court for the District of Columbia. The parties in these cases have entered into stipulations acknowledging that the issues of law involved therein are substantially the same as in the instant cases, and have agreed to hold proceedings in abeyance in the above cases pending settlement of the instant suits.

Dist. Ct., Parish of East Baton Rouge, La. (Jan. 15, 1954) (R. 55-67). It is also in conflict with the principle expressed by this Court that such statutes must be construed together.

The Submerged Lands Act and the Outer Contiental Shelf Lands Act were enacted at the same Session of Congress, deal with the same subject matter and affect the same class of persons and hence are *in pari materia*, *United States* v. *Stewart*, 311 U.S. 60 (1940). They must be construed together. *Sanford's Estate* v. *Commissioner of Internal Revenue*, 308 U.S. 39 (1939).

The relevant portions of the two Acts clearly reflect the intent of Congress. Both would recognize State-issued leases which had been maintained in good faith to June 5, 1950. Both offer to convey back to prior holders, for a stipulated consideration, the terms of the leases remaining unexpired on June 5, 1950, shortened by the period between that date and December 11, 1950, the date on which Louisiana and its lessees were enjoined from mineral operations in the area. Significantly, neither Act contains any restrictive or qualifying provision denying lessees benefits under the Acts if the leases were not maintained by rental payments subsequent to June 5, 1950.

The grant in section 3 of the Submerged Lands Act is to the States "or those persons who on June 5, 1950, were entitled thereto," and rights so vested in the States are subject to each State-issued lease "in force and effect on June 5, 1950." 67 Stat. 30, 43 U.S.C. (Supp. II, 1952) sec. 1311. Section 6 (a) (2) of the Outer Continental Shelf Lands Act similarly requires that the leases have been maintained in effect to June 5, 1950. 67 Stat. 465, 43 U.S.C. (Supp. II, 1952) sec. 1335 (a) (2). These provisions make it crystal clear

that Congress intended to extend benefits of the Acts to lessees who had maintained leases in effect to June 5, 1950.

It is believed that the Louisiana District Court decision validating Petitioner's leases under the Submerged Lands Act to the extent that they lie within State boundaries correctly reflects the intended result of the statutory program enacted by Congress with respect to State-issued leases invalidated by this Court's decision in *United States* v. *Louisiana*, 339 U.S. 699 (1950). The language of the Outer Continental Shelf Lands Act and its legislative history amply support the contention that the Federal portion of these same leases should likewise be validated.[6]

The Court below seeks to avoid recognition of the obvious intent of the overall statutory program dealing with the invalidated leases by ignoring completely the Submerged Lands Act. It is submitted that such

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[6] Congressional intent in this respect is clearly and simply stated in the Report of the Senate Committee on Interior and Insular Affairs as follows: "Section 6 deals with validation by the Federal Government of State-issued leases. Some eleven or mor specific standards which each such lease must meet before it is validated are set forth. *If all of these specific conditions are met*, the leaseholder may continue to maintain a lease and to conduct operations under it." (Emphasis added). To the same effect is the statement included in the Committee Report and made before the Senate Committee by former Solicitor General Philip Perlman, corroborating the view that State leases in force and effect on June 5, 1950, would be recognized by the Federal Government. He states: "* * * In the resolution now before this Committee, it is contemplated that State leases made prior to December 21, 1948—the date of the filing of the suits against Louisiana and Texas—and in force and effect on June 5, 1950, would be recognized by the Federal Government. * * *" Report No. 411, Senate Committee on Interior and Insular Affairs, S. 1901, 83d Cong., 1st Session, pp. 10, 12.

and oversight contravenes declarations made by this Court that would require contrary action. *Sanford's Estate* v. *Commissioner of Internal Revenue*, 308 U.S. 39 (1939).

That courts presented with the responsibility of giving a statute the meaning intended by Congress should consider enactments *in pari materia* with such statute is a matter of continuing significance. The conflict between the lower Court's decision and this Court's espoused principle that statutes *in pari materia* must be construed together should not be left unresolved. Similarly, the conflict between the lower Court's decision and the final State Court decision as to the avowed purpose of the statutory program dealing with the equities of state lessees should likewise be resolved by this Court.

3. The decision of the District Court, as affirmed by the Court below, represents a subtle erosion of the traditional function of the judiciary in reviewing administrative action: that of determining questions of law.

It is submitted that the District Court, acknowledging room for disagreement, concerned itself with the reasonableness of Respondent's action rather than determining the question of law presented to it. In expressing its opinion as to the appropriateness of Respondent's construction of section 6, the District Court states (R. 88): "While there is unquestionably room for disagreement as to the meaning of the relevant section of the Act, this strikes us as *a* proper . . . and *a* reasonable interpretation. It appearing that the determination by the Secretary . . . was justified and reasonable . . . summary judgment . . . is granted in favor of defendant, Secretary of the Interior." (Emphasis added).

It is urged that this reflection upon administrative action falls short of the true function of the judiciary. Section 10 of the Administrative Procedure Act of 1946, 60 Stat. 237, 243, 5 U.S.C. sec. 1009, would require reviewing courts to determine independently "all relevant questions of law" as well as to "interpret constitutional and statutory provisions."[7]

Section 6 (b) of the Outer Continental Shelf Lands Act gives Respondent no discretion as to who shall receive benefits under the Act. It simply charges Respondent with factually determining which of the void State-issued leases meet the requirements imposed by Congress for validation. It does not contemplate that Respondent will determine substantive policy by exercising both legislative and judicial functions and in so doing restrict the scope of the Act. *United States* v. *United Verde Copper Company*, 196 U. S. 207, (1904). Nor does the frequently repeated statement that consideration should be given to a long continued administrative construction have any application in this situation. Respondent's construction was no sooner made than challenged. *Davies Warehouse Company* v. *Bowles*, 321 U.S. 144 (1943); *Alexander* v. *Cosden Pipeline Company*, 290 U.S. 484 (1933).

Nor is the reasonableness of Respondent's action in issue. The inquiry in cases of this type is determination of legislative intent. It is the judiciary which is charged with the responsibility of determining statutory purpose and where that purpose is clear, as in this

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[7] See Senate Document No. 248, 79th Congress, 2nd Session, setting out the legislative history of the Administrative Procedure Act, and p. 370 thereof indicating that Congress intended that reviewing courts independently construe statutory provisions.

case, *it should matter not that the contrary may be justified or reasonable.*

It is urged that the District Court's order, as affirmed by the Court of Appeals, is in conflict with the statutory obligation of independently interpreting the statute rather than merely finding that any one of many interpretations may be reasonable or justified. The decisions of this Court indicate the propriety of such independent action by the judiciary. *East Texas Motor Freight Lines, Inc.* v. *Frozen Food Express et al.*, 351 U.S. 40 (1956); *Packard Motor Car Co.* v. *N.L.R.B.*, 330 U.S. 485 (1947).

The role to be played by the courts in cases presented for judicial review is of continuing importance, and the issue posed herein presents a significant question of administrative law which should be entertained and finally determined by this Court. The effect of the decision below, if unreversed, upon the historic division of responsibility among the various branches of our Government makes this case an appropriate one for the exercise of this Court's discretionary jurisdiction.

CONCLUSION

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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June, 1957

APPENDIX A

The material provisions of the Submerged Lands Act of May 22, 1953, c.65, 67 Stat. 30-31, 43 U.S.C. (Supp. II, 1952) sec. 1311, are as follows:

SEC. 3. RIGHTS OF THE STATES.—

(a) It is hereby determined and declared to be in the public interest that (1) title to and ownership of the lands beneath navigable waters within the boundaries of the respective States, and the natural resources within such lands and waters, and (2) the right and power to manage, administer, lease, develop, and use the said lands and natural resources all in accordance with applicable State law be, and they are hereby, subject to the provisions hereof, recognized, confirmed, established, and vested in and assigned to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof;

(b) (1) The United States hereby releases and relinquishes unto said States and persons aforesaid, except as otherwise reserved herein, all right, title and interest of the United States, if any it has, in to all said lands, improvements, and natural resources; (2) the United States hereby releases and relinquishes all claims of the United States, if any it has, for money or damages arising out of any operations of said States or persons pursuant to State authority upon or within said lands and navigable waters; and (3) the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States shall pay to the respective States or their grantees issuing leases covering such lands or natural resources all moneys paid thereunder to the Secretary of the Interior or to the Secretary of the Navy or to the Treasurer of the United States and subject to the control of any of them or to the control of the United States on the effective date of this Act, except that

portion of such moneys which (1) is required to be returned to a lessee; or (2) is deductible as provided by stipulation or agreement between the United States and any of said States;

(c) The rights, powers, and titles hereby recognized, confirmed, established, and vested in and assigned to the respective States and their grantees are subject to each lease executed by a State, or its grantee, which was in force and effect on June 5, 1950, in accordance with its terms and provisions and the laws of the State issuing, or whose grantee issued, such lease, and such rights, powers, and titles are further subject to the rights herein now granted to any person holding any such lease to continue to maintain the lease, and to conduct operations thereunder, in accordance with its provisions, for the full term thereof, and any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued such lease: *Provided, however,* That, if oil or gas was not being produced from such lease on and before December 11, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of the State issuing, or whose grantee issued, such lease: *Provided, however,* That within ninety days from the effective date hereof (i) the lessee shall pay to the State or its grantee issuing such lease all rents, royalties, and other sums payable between June 5, 1950, and the effective date hereof, under such lease and the laws of the State issuing or whose grantee issued such lease, except such rents, royalties, and other sums as have been paid to the State, its grantee, the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States and not refunded to the lessee; and (ii) the lessee shall file

with the Secretary of the Interior or the Secretary of the Navy and with the State issuing or whose grantee issued such lease, instruments consenting to the payment by the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States to the State or its grantee issuing the lease, of all rents, royalties, and other payments under the control of the Secretary of the Interior or the Secretary of the Navy or the Treasurer of the United States or the United States which have been paid, under the lease, except such rentals, royalties, and other payments as have also been paid by the lessee to the State or its grantee;

The relevant portions of the Outer Continental Shelf Lands Act of August 7, 1953, c.345, 67 Stat. 462-467, 43 U.S.C. (Supp. II, 1952) sec. 1335, are as follows:

SEC. 6. MAINTENANCE OF LEASES ON OUTER CONTINENTAL SHELF.—

(a) The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the law of such State) if—

(1) such lease, or a true copy thereof, is filed with the Secretary by the lessee or his duly authorized agent within ninety days from the effective date of this Act, or within such further period or periods as provided in section 7 hereof or as may be fixed from time to time by the Secretary;

(2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had authority to issue such lease;

(3) there is filed with the Secretary, within the period or periods specified in paragraph (1) of this subsection, (A) a certificate issued by the State official or agency having jurisdiction over such lease stating that it would have been in force and effect as required by the provisions of paragraph (2) of this subsection, or (B) in the absence of such certificate, evidence in the form of affidavits, receipts, canceled checks, or other documents that may be required by the Secretary, sufficient to prove that such lease would have been so in force and effect;

(4) except as otherwise provided in section 7 hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and the effective date of this Act, which have not been paid in accordance with the provisions thereof, or to the Secretary or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection, and all rents, royalties, and other sums payable under such lease after the effective date of this Act, are paid to the Secretary, who shall deposit such payments in the Treasury in accordance with section 9 of this Act;

(5) the holder of such lease certifies that such lease shall continue to be subject to the overriding royalty obligations existing on the effective date of this Act;

(6) such lease was not obtained by fraud or misrepresentation;

(7) such lease, if issued on or after June 23, 1947, was issued upon the basis of competitive bidding;

(8) such lease provides for a royalty to the lessor on oil and gas of not less than 12½ per centum and on sulphur of not less than 5 per centum in amount or value of the production saved, removed, or sold from the lease, or, in any case in which the lease provides for a lesser royalty, the holder thereof consents in writing, filed with the Secretary,

to the increase of the royalty to the minimum herein specified;

(9) the holder thereof pays to the Secretary within the period or periods specified in paragraph (1) of this subsection an amount equivalent to any severance, gross production, or occupation taxes imposed by the State issuing the lease on the production from the lease, less the State's royalty interest in such production, between June 5, 1950, and the effective date of this Act and not heretofore paid to the State, and thereafter pays to the Secretary as an additional royalty on the production from the lease, less the United States' royalty interest in such production, a sum of money equal to the amount of the severance, gross production, or occupation taxes which would have been payable on such production to the State issuing the lease under its laws as they existed on the effective date of this Act;

(10) such lease will terminate within a period of not more than five years from the effective date of this Act in the absence of production of operations for drilling, or, in any case in which the lease provides for a longer period, the holder thereof consents in writing, filed with the Secretary, to the reduction of such period so that it will not exceed the maximum period herein specified; and

(11) the holder of such lease furnishes such surety bond, if any, as the Secretary may require and complies with such other reasonable requirements as the Secretary may deem necessary to protect the interests of the United States.

(b) Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder in accordance with (1) its provisions as to the area, the minerals covered, rentals and, subject to the provisions of paragraphs (8), (9) and (10) of subsection (a) of this section, as to

royalties and as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950, under the provisions of such lease or any extensions, renewals, or replacements authorized therein, or heretofore authorized by the laws of such State, and (2) such regulations as the Secretary may under section 5 of this Act prescribe within ninety days after making his determination that such lease meets the requirements of subsection (a) of this section: *Provided, however,* That any rights to sulphur under any lease maintained under the provisions of this subsection shall not extend beyond the primary term of such lease or any extension thereof under the provisions of such subsection (b) unless sulphur is being produced in paying quantities or drilling, well reworking, plant construction, or other operations for the production of sulphur, as approved by the Secretary, are being conducted on the area covered by such lease on the date of expiration of such primary term or extension: *Provided further,* That if sulphur is being produced in paying quantities on such date, then such rights shall continue to be maintained in accordance with such lease and the provisions of this Act: *Provided further;* That, if the primary term of a lease being maintained under subsection (b) hereof has expired prior to the effective date of this Act and oil or gas is being produced in paying quantities on such date, then such rights to sulphur as the lessee may have under such lease shall continue for twenty-four months from the effective date of this Act and as long thereafter as sulphur is produced in paying quantities, or drilling, well working, plant construction, or other operations for the

production of sulphur, as approved by the Secretary, are being conducted on the area covered by the lease.

* * * * * * * * * * * *

(d) Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

(e) In the event any lease maintained under this section covers lands beneath navigable waters, as that term is used in the Submerged Lands Act, as well as lands of the outer Continental Shelf, the provisions of this section shall apply to such lease only insofar as it covers lands of the outer Continental Shelf.

APPENDIX B

The Opinion of the U. S. Court of Appeals in Cases Nos. 13066 and 13067, styled *Stanolind Oil and Gas Company* v. *Fred A. Seaton, Secretary of the Interior,* rendered on November 1, 1956, is as follows:

Before EDGERTON, *Chief Judge,* and WILBUR K. MILLER and BASTIAN, *Circuit Judges.*

EDGERTON, *Chief Judge:* On September 12, 1946, the State of Louisiana issued to appellant six oil and gas leases covering submerged lands in the Gulf of Mexico. The leases were to expire at the end of a year unless the lessee drilled or renewed the leases for a year by paying additional rent. Appellant did not drill, but paid rent for three one-year renewals and so maintained the leases in effect until September 12, 1950. Meantime, on June 5, 1950, the Supreme Court ruled that the leased area belonged to the United States. *United States* v. *Louisiana,* 339 U. S. 699.

Rent became due again September 12, 1950. Appellant did not pay it.[1] This terminated the leases according to their terms. And on September 15, 1950, appellant executed and delivered formal written releases to the State of Louisiana.

On August 7, 1953 Congress passed the Outer Continental Shelf Lands Act. 67 Stat. 462, 43 U.S.C. §§ 1331-1343 (Supp. III, 1956). It provides in § 6 (b) that "Any person *holding* a [State] mineral lease, which as determined by the Secretary [of the Interior] meets the requirements of subsection (a) of this section, may *continue to maintain* such lease, and may conduct operations thereunder, in accordance with (1) its provisions . . . as to the term thereof

[1] There is some dispute as to whether this was solely due to the Supreme Court decision, or whether appellant had ceased to be interested in the leased area.

and of any extensions, renewals or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, . . . *then for a term from the effective date hereof /August 7, 1953/ equal to the term remaining unexpired on December 11, 1950.* . . ." 67 Stat. 466, 43 U.S.C. § 1335 (b) (Supp. III, 1956). (Emphasis added.)

On September 10, 1953, appellant asked appellee, the Secretary of the Interior, to determine that appellant was entitled by § 6 of the Act to maintain the Louisiana leases as federal leases to the extent that they covered lands of the outer continental shelf.[2] Appellee determined that § 6 (b) of the Act covers only leases in existence on December 11, 1950, and also on August 7, 1953, when the Act was passed. The District Court granted summary judgment for the appellee.

We think the court was clearly right. The leases in suit had no "term remaining unexpired on December 11, 1950". Appellant was not, when the Act was passed, "holding" the leases. For each of these reasons, independently of the other, § 6 (b) of the Act does not cover these leases.

Affirmed.

WILBUR K. MILLER, *Circuit Judge*, dissents.

The Judgment in the above cited cases, made and entered on November 1, 1956, is as follows:

These appeals came on to be heard on the record from the United States District Court for the District of Columbia, and were argued by counsel.

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[2] Appellant tendered to the Secretary the rents that would have become due under its leases, if they had been in effect, June 5, 1950, and August 7, 1953, and also rent for the year beginning September 12, 1953.

On Consideration Whereof, It is ordered and adjudged by this Court that the judgment of the said District Court appealed from in these cases be, and the same is hereby, affirmed.

Dated: November 1, 1956.

Per Chief Judge Edgerton.

Circuit Judge, Wilbur K. Miller, dissents.

No. 1682

In the Supreme Court of the United States

October Term, 1956

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER

v.

FRED A. SEATON, SECRETARY OF THE INTERIOR

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

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BRIEF FOR THE RESPONDENT IN OPPOSITION

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October Term, 1957

No. ~~1082~~ 187

PAN AMERICAN PETROLEUM CORPORATION,
PETITIONER

v.

FRED A. SEATON, SECRETARY OF THE INTERIOR

On Petition for a Writ of Certiorari to the United States Court of Appeals for the District of Columbia Circuit

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. App. 8a-9a) is reported under the title *Stanolind Oil and Gas Company* v. *Seaton* at 242 F.2d 23. The opinion of the District Court (R. 83-88) is not reported.

JURISDICTION

The judgment of the Court of Appeals was entered on November 1, 1956 (Pet. App. 9a-10a). A timely petition for rehearing was denied on March 19, 1957 (R. 103). The petition for a writ of certiorari was filed on June 13, 1957. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether, under Section 6 of the Outer Continental Shelf Lands Act, the Secretary of the Interior was required to reinstate a non-producing oil and gas lease off the coast of Louisiana which the Louisiana lessee had allowed to lapse between June 5 and December 11, 1950.

STATUTE INVOLVED

Relevant portions of Section 6 of the Outer Continental Shelf Lands Act of August 7, 1953, 67 Stat. 465-567, 43 U.S.C., Supp. IV, 1335, are as follows:

> *Sec. 6. Maintenance of Leases on Outer Continental Shelf.*—(a) The provisions of this section shall apply to any mineral lease covering submerged lands of the outer Continental Shelf issued by any State (including any extension, renewal, or replacement thereof heretofore granted pursuant to such lease or under the laws of such State) if—
>
> * * * *
>
> (2) such lease was issued prior to December 21, 1948, and would have been on June 5, 1950, in force and effect in accordance with its terms and provisions and the law of the State issuing it had the State had authority to issue such lease;
>
> * * * *
>
> (4) except as otherwise provided in section 7 hereof, all rents, royalties, and other sums payable under such lease between June 5, 1950, and the effective date of this Act, which have not been paid in accordance with the provisions thereof, or to the

Secretary [of the Interior] or to the Secretary of the Navy, are paid to the Secretary within the period or periods specified in paragraph (1) of this subsection * * *;

* * * *

(b) Any person holding a mineral lease, which as determined by the Secretary meets the requirements of subsection (a) of this section, may continue to maintain such lease, and may conduct operations thereunder, in accordance with (1) its provisions * * * as to the term thereof and of any extensions, renewals, or replacements authorized therein or heretofore authorized by the laws of the State issuing such lease, or, if oil or gas was not being produced in paying quantities from such lease on or before December 11, 1950, or if production in paying quantities has ceased since June 5, 1950, or if the primary term of such lease has expired since December 11, 1950, then for a term from the effective date hereof equal to the term remaining unexpired on December 11, 1950 * * *.

* * * *

(d) Any person complaining of a negative determination by the Secretary of the Interior under this section may have such determination reviewed by the United States District Court for the District of Columbia by filing a petition for review within sixty days after receiving notice of such action by the Secretary.

STATEMENT

In 1946 and 1948 petitioner leased from the State of Louisiana oil and gas rights in seven tracts of submerged land in the Gulf of Mexico (R. 31-32,

89). Each lease provided that, in the absence of drilling or production, it would expire at the end of one year unless the lessee within that time paid additional rent to extend its drilling privilege for another year (R. 17, 89). The total period, called the primary term, within which each lease could be thus extended by successive annual rent payments was originally five, later extended to seven, years from the issuance date (R. 17, 22-23, 89).[1] Petitioner made annual rent payments by which these leases were extended, without drilling, to their respective anniversary dates of September 12 or November 19, 1950 (R. 33, 89-90).

On June 5, 1950, this Court held that Louisiana had no title to or property interest in the offshore area. *United States* v. *Louisiana*, 339 U.S. 699. On December 11, 1950, a decree was entered in that case, enjoining the State and its lessees from further activity in the area without consent of the United States. 340 U.S. 899. After June 5, 1950, petitioner continued to pay delay rentals on other offshore leases that it held from Louisiana, but decided to pay no more on these seven, and let them lapse (R. 34-35, 44-52, 89). Formal releases were given to the State for six leases on September 15, 1950 (R. 35), and for the seventh on December 11, 1950 (R. 90).

By the Submerged Lands Act of May 22, 1953, Congress gave the submerged lands within historic

[1] There was no limit on how long a lease could be extended by continuous drilling or production of oil or gas in paying quantities (R. 18).

State boundaries to the several coastal States or to the persons who were entitled thereto under State law on June 5, 1950. 67 Stat. 29, 43 U.S.C., Supp. IV, 1301-1315. By the Outer Continental Shelf Lands Act of August 7, 1953, Congress provided for leasing of submerged lands seaward of those granted by the Submerged Lands Act. 67 Stat. 462, 43 U.S.C., Supp. IV, 1331-1343. Section 6(b) of the Outer Continental Shelf Lands Act provides that "Any person holding a mineral lease" issued by a coastal State, which is determined by the Secretary of the Interior to meet the requirements of Section 6(a), may continue to maintain such lease as a federal lease, subject to certain qualifications. In the case of non-producing leases, as were those involved here (R. 39, 89), maintenance is permitted for a term from August 7, 1953 (the effective date of the Act), "equal to the term remaining unexpired on December 11, 1950" (*supra*, p. 3).

Petitioner made timely applications under Section 6 of the Outer Continental Shelf Lands Act to the Secretary of the Interior to maintain the seven leases in question, tendering all rents that would have been due between June 5, 1950, and August 7, 1953, and for the year beginning September 12, 1953 (R. 38, 67-77, 90).[2] The Secretary rejected the tender, deter-

[2] The submerged lands here involved are within the area claimed by both the United States and the State of Louisiana in *United States* v. *Louisiana*, No. 11, Original, of the present Term. However, for purposes of the present case the parties are agreed that the lands are on the outer continental shelf; that is, that they are under federal rather than State control (R. 39, 89).

mining that because the leases had been allowed to expire before December 11, 1950, they were not eligible for maintenance under the Act (R. 38, 78-80, 90). Petitioner thereupon brought this action to review that ruling, as permitted by Section 6(d) of the Act (*supra*, p. 3). On stipulated facts (R. 31-40) and cross-motions (R. 80-83), the court gave summary judgment for the Secretary of the Interior (R. 83-88, 90), which the Court of Appeals affirmed (Pet. App. 8a-10a). Judge Miller dissented without opinion.

ARGUMENT

The case presents no question of general importance. The only issue is whether State mineral leases that were allowed to expire after June 5, 1950, are eligible to be reinstated as federal leases under Section 6 of the Outer Continental Shelf Lands Act. This case and the two others mentioned by petitioner as now pending (Pet. 13, fn. 5) are the only suits which raise the question at present. We are informed by the Department of the Interior that the question is not involved in any pending application under Section 6; and the time has expired for filing other such applications or for suing on any applications that have already been denied on this ground. Thus, there can be no further cases on the point. Petitioner's suggestion that the ruling below will prevent maintenance of all leases under Section 6 is based on a misunderstanding of the holding (see *infra*, pp. 9-10). Therefore, although petitioner's attack on the deci-

sions below is unfounded, the case is in any event not an appropriate one for review by this Court.[3]

Section 6 of the Outer Continental Shelf Lands Act of August 7, 1953, shows on its face that it does not permit reinstatement of State leases that had expired before December 11, 1950, as did those here sued on. The operative language of the section is the provision of Section 6(b) that "Any person *holding* a mineral lease, which as determined by the Secretary [of the Interior] meets the requirements of subsection (a) of this section may *continue to maintain* such lease * * * " (*supra*, p. 3, emphasis added). It does not say that one who formerly held a lease may resume maintenance of it, which is the effect that petitioner would give it. Moreover, the period for which non-producing leases, as are here involved (R. 39, 89), may be maintained is "for a term from the

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[3] Both of the courts below affirmatively agreed with the construction put upon the statute by the Secretary of the Interior. Consequently, the case does not present the question, suggested by the petitioner (Pet. 16-18), of whether it is enough for a court to find that an administrative interpretation is reasonable, without finding that it is right. The District Court said of the Secretary's construction (R. 88), "this strikes us as a proper, preferable and, in the very least, as a reasonable interpretation." The word "preferable" (omitted in the petitioner's partial quotation; Pet. 16) demonstrates that the court had construed the statute for itself. Even more emphatically giving its own interpretation of the statute, the Court of Appeals said (Pet. App. 9a): "We think the court was clearly right. The leases in suit had no 'term remaining unexpired on December 11, 1950'. Appellant was not, when the Act was passed, 'holding' the leases. For each of these reasons, independently of the other, § 6(b) of the Act does not cover these leases."

effective date hereof equal to the term remaining unexpired on December 11, 1950." (*Supra*, p. 3.) Since petitioner's leases expired by their own limitations when petitioner failed to extend them, on September 12 or November 19, 1950, they obviously had no "term remaining unexpired on December 11, 1950." Thus, petitioner is not a person "holding" a lease, so as to be entitled to benefits under Section 6, and in any event the measure of benefits defined by Section 6 would be, in the case of petitioner's former leases, zero.[4]

The petitioner contends (Pet. 9-10) that the construction put on the Act by the court below, precluding reinstatement of lapsed leases, renders superfluous Section 6(a)(4), which petitioner says "expressly provides that lessees who held leases in force and effect on June 5, 1950, may tender *all* back rentals due under the leases and thus provide for their reinstatement." However, Section 6(a)(4) in fact says nothing about reinstatement (see *supra*,

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[4] Petitioner argues (Pet. 9) that this construction of the Act, requiring leases to have been in effect on December 11, 1950, and on the date of the Act, is inconsistent with the requirement of Section 6(a)(2) (*supra*, p. 2) that the leases must have been in effect on June 5, 1950. There is no inconsistency in requiring the leases to have been in effect on those several dates. The evident effect of the June 5 requirement is that leases which lapsed before that date cannot be reinstated thereafter so as to secure benefits under the federal Act. That is, the benefits of Section 6 are to be limited to leases that were kept in effect continuously, and are not extended to any that may have been reinstated after June 5, 1950, after having lapsed before that date.

pp. 2-3), and its purpose is altogether different. This was fully explained in the Senate committee hearings. The purpose of the provision, as there explained, was to require payment of deficiencies in any case where an audit might show that there had been errors in computing payments made. Senator Anderson urged that the Act ought not to permit reinstatement where lessees had let their leases lapse after June 5, 1950; Senator Daniel emphatically assured him that Section 6(a)(4) would not have that effect, and this was corroborated by two expert witnesses, an Assistant Attorney General of Louisiana and the chairman of a legal committee of offshore oil operators, invited to testify as representative of the industry. No witness or committee member took a different view. Hearings before the Senate Committee on Interior and Insular Affairs on S. 1901,[5] 83d Cong., 1st Sess., 297-300, 528-529, 532, 534. Senator Cordon, in charge of the bill in the Senate said, with reference to another clause of Section 6(b), "our purpose was to validate the leases that were being operated and held in good faith * * *." 99 Cong. Rec. 10473. It would violate that purpose to read into Section 6(a)(4) an implication that former lessees are to be allowed to reinstate old leases that they allowed to expire.

Petitioner also argues (Pet. 11-13) that since all State offshore leases were void because the States had no title, it follows that no such lease had a "term"

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[5] The provisions of S. 1901 were substituted for the original provisions of H.R. 5134, under which designation the bill was ultimately passed. 99 Cong. Rec. 7261.

in a true legal sense. Consequently, says petitioner, the court below required the impossible in requiring that a non-producing lease, in order to be maintainable, must have had a term remaining unexpired on December 11, 1950. Petitioner draws the conclusion that the court could not consistently recognize any State lease which did not have strict validity and that, since none did, the whole purpose of Section 6 will be frustrated. But the court made no such impossible requirement. Congress and the court were well aware of the invalidity of the State leases; that was the very reason for the enactment of Section 6. When Congress spoke of the "term" of a lease which it knew to be void, it meant to refer to the ostensible or putative or purported term; and the courts below correctly construed the expression in that sense. When petitioner's purported leases expired, they had thereafter no purported term remaining unexpired, by which to measure benefits under Section 6. This reasonable, and indeed inevitable, construction of the congressional language involves none of the anomalies and entails none of the consequences conjured up by petitioner's ingenious apprehensions.

Petitioner urges (Pet. 13-16) that the decision below conflicts with a decision of a trial court of the State of Louisiana which allowed reinstatement, under the Submerged Lands Act, of leases that had been let lapse after June 5, 1950. *Stanolind Oil and Gas Company* v. *State Mineral Board*, No. 46,628, 19th Jud. Dist. Ct., Parish of East Baton Rouge, La. (R. 55-67). Whatever significance such a conflict might have is wholly destroyed by the fundamental

difference between the provisions of the Submerged Lands Act and the Outer Continental Shelf Lands Act. The former clearly makes June 5, 1950, the critical date for existence of a lease. It grants the submerged lands within State boundaries "to the respective States or the persons who were on June 5, 1950, entitled thereto under the law of the respective States in which the land is located, and the respective grantees, lessees, or successors in interest thereof." Sec. 3(a), 67 Stat. 30, 43 U.S.C., Supp. IV, 1311(a). In contrast, the Outer Continental Shelf Lands Act provides that "Any person holding a mineral lease * * * may continue to maintain" it. Sec. 6(b), 67 Stat. 466, 43 U.S.C., Supp. IV, 1335 (b). The sense of a present "holding", inherent in the grammatical construction, is strongly reinforced by the absence of any provision for successors in interest, which logic would require if reference to a "holding" at some past time had been intended. When Congress uses such different language in two statutes so closely linked in time and subject, it must be concluded that it intends different things.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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Solicitor General.

JOHN F. DAVIS,
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